

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

OCTOBER 1999 SESSION

FILED

December 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

JOHNNY ALTON SMITH,

Appellant,

vs.

STATE OF TENNESSEE,

Appellee.

* C.C.A. No. W1999-01893-CCA-R3-CO

* MADISON COUNTY

* Hon. Roy B. Morgan, Jr., Judge

* (Post-Conviction)

*

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OPINION FILED: _____

AFFIRMED - RULE 20

NORMA MCGEE OGLE, JUDGE

OPINION

The petitioner, Johnny

Alton Smith, appeals the dismissal of his petition for post-conviction relief by the Madison County Circuit Court on March 4, 1999. According to the petitioner, he pled guilty on January 7, 1987, in the Madison County Circuit Court to attempted sale of a controlled substance. The trial court imposed a suspended sentence of two years incarceration in the Tennessee Department of Correction in conjunction with an equal period of probation.¹ The record reflects that no appeal was taken until the petitioner filed a "Petition for the Issuance of a Writ of Habeas Corpus" on April 9, 1998, in which he challenged the knowing and voluntary nature of his guilty plea and also alleged ineffective assistance of counsel. The post-conviction court properly treated the appellant's petition as one for post-conviction relief, appointed counsel, and conducted a hearing on February 26, 1999. The post-conviction court dismissed the petition due to the expiration of the applicable statute of limitations. Following a thorough review of the record and the parties' briefs, we conclude that this is an appropriate case for affirmance pursuant to Ct. of Crim. App. Rule 20.

At the time that the petitioner's conviction became final in 1987, the statute of limitations applicable to post-conviction proceedings was three years from the date of the final action of the highest state appellate court to which an appeal was taken. Tenn. Code. Ann. § 40-30-102 (Repealed May 10, 1995). However, in 1995, the legislature enacted the Post-Conviction Procedure Act, which governs all petitions filed after May 10, 1995, including the instant petition. The 1995 Act reduced the statute of limitations from three years to one year. Tenn. Code Ann. § 40-30-202(a) (1997). Generally, this one year statute of limitations can only be avoided if a petitioner's claims fall within one of three exceptions enumerated in the statute. *Id.* at (b). But see *Seals v. State*, No. 03C01-9802-CC-00050, 1999 WL 2833, at *2 (Tenn. Crim. App. at Knoxville, January 6, 1999)(this court observed that the "anti-tolling" provision of the 1995 Act has no operation against constitutional principles).

¹Apparently, the appellant is currently incarcerated in a federal correctional facility in Kentucky pursuant to a 1995 conviction of a federal offense. In his petition and in his brief on appeal, the appellant alleges that his sentence for the federal offense was enhanced due to his 1987 conviction for attempted sale of a controlled substance, which is the subject of the current petition. Accordingly, the appellant is suffering the collateral legal consequences of his 1987 conviction. See *Watt v. State*, 894 S.W.2d 307, 308-309 (Tenn. Crim. App. 1994).

We agree with the post-conviction court and the State that the petitioner has failed to demonstrate that one of the statutory exceptions is applicable in his case. Moreover, application of the statute of limitations in this case does not offend due process. Burford v. State, 845 S.W.2d 204, 208-209 (Tenn. 1992); Seals, No. 03C01-9802-CC-00050, 1999 WL 2833, at *2. Accordingly, we affirm the judgment of the post-conviction court pursuant to Ct. of Crim. App. Rule 20.

Norma McGee Ogle, Judge

CONCUR:

John H. Peay, Judge

Alan E. Glenn, Judge